

Before the
Federal Communications Commission
Washington, DC 20554

APR 10 2002

FCC-MAILROOM

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Gary Community School Corporation)	File No. SLD-192113
Gary, Indiana)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER**Adopted: March 29, 2002****Released: April 4, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Gary Community School Corporation (Gary), Gary, Indiana, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Gary seeks review of SLD's denial of its Funding Year 3 requests for discounted internal connections under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from Yamilette Williams, Gary Community School Corporation, to Federal Communications Commission, filed May 15, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.⁷ These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One Services), and requests for internal connections shall receive second priority (Priority Two Services). Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications services or Internet access.

4. Any funding remaining after allocation to Priority One services is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁸ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. During Funding Year 3 (July 1, 2000 – June 30, 2001) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 82 percent discount level.

5. Under the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.⁹ The level of

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).

⁸ *Id.* at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for national school lunch program. 47 C.F.R. § 54.505.

⁹ 47 C.F.R. § 54.505(b).

poverty for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.¹⁰ A school's high-cost status is derived from rules that classify it as urban or rural.¹¹ The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.¹²

6. By letter dated September 22, 2000, SLD denied Funding Request Numbers (FRNs) 424252, 424422, 424514, and 424932 of Gary's Funding Year 3 application for discounts.¹³ Each request sought discounted internal connections and was denied because the "funding cap will not provide for [i]nternal [c]onnections [with less than an] 81% discount rate to be funded."¹⁴

7. Gary then appealed to SLD, making three arguments.¹⁵ First, it asserted that "[t]he number of students who participate in the National [School] Lunch Program is far less than the number of students who are actually eligible," and that as a result, "[w]hen calculating our true Erate discount, we . . . are eligible above 81%."¹⁶ We presume that by making this argument, Gary is implying that it had erroneously calculated its discounts based only on the students actually participating in the NSLP, instead of using the number eligible for such participation. Gary stated that it was not thereby asking for funding at discount rates higher than its application specified, but only that the FRNs be considered to have a higher discount rate for purposes of determining their eligibility for internal connections discounts.¹⁷

8. Second, Gary asserted that it had incorrectly flagged some of these requests as requests for Priority Two internal connections, when they were in fact requests for Priority One telecommunications service.¹⁸ It did not specify the requests to which it was referring.

9. Third, Gary asserted that some of the requests had incorrectly been described as shared internal connections when they were in fact at the "building level."¹⁹ Gary asserted that

¹⁰ 47 C.F.R. § 54.505(b)(1).

¹¹ 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

¹² 47 C.F.R. § 54.505(c).

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne Mallette, Gary Community School Corporation, dated September 22, 2000 (Funding Commitment Decision Letter).

¹⁴ *Id.* at 6, 7.

¹⁵ Letter from Yamillette Williams, Gary Community School Corporation, to Schools and Libraries Division, Universal Service Administrative Company, filed October 23, 2000.

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

the vast majority of these buildings were eligible for 90% discounts.²⁰ Again, Gary did not specify the requests to which it was referring.

10. SLD denied Gary's appeal in its entirety.²¹ First, with regard to Gary's request for a higher discount percentage for its internal connections request, SLD stated that, after reviewing Gary's application and supporting documents on appeal, it found that the five internal connections FRNs included two shared funding requests with a 74% discount, two site specific requests with an 80% discount, and one site specific request with a 20% discount.²² SLD's decision further found, after reviewing the documentation, that the descriptions of the services requested confirmed that these FRNs were properly characterized as internal connections.²³ Thus, SLD held, Gary's appeal must be denied because, in Funding Year 3, only requests with a discount rate of at least 82% were funded.²⁴ Finally, SLD construed Gary's request to have its eligibility determined under a higher discount rate as a request for additional funds made on appeal.²⁵ SLD then rejected the request on the grounds that funding requests could only be made in an FCC Form 471.²⁶

11. Gary then filed the pending Request for Review. In its Request for Review, Gary raises the same three arguments it presented to SLD.²⁷ Again, it alleges that the "true" discount rates for the FRNs are higher than that indicated in the FCC Form 471, that the service category of unspecified FRNs is incorrect, and that the "shared" designation of unspecified FRNs is incorrect and should instead be "building-specific."²⁸ We note that Gary does not specify which school is receiving the unspecified service.²⁹

12. After reviewing the record, we find that SLD correctly denied funding for the five requests because they seek discounts of less than 82% on internal connections in Funding Year 3, when only discounts of 82% or higher were funded. Indeed, Gary does not dispute that its funding requests were properly denied based on the information that it provided in its FCC Form 471. Each of its three arguments alleges that it made a data entry error that, once corrected, will support additional funding. Specifically, Gary argues that, in calculating the discount rates for

²⁰ *Id.*

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Yamilette Williams, Gary Community School Corporation, dated April 16, 2001 (Administrator's Decision on Appeal).

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Request for Review, at 1.

²⁸ *Id.*

²⁹ *Id.*

the schools for which it seeks discounts, Gary used the number of students actually participating in the NSLP instead of the number of "eligible" students. Gary also alleges a data entry error in the category of service. Finally, Gary alleges an error in whether the services were shared or site-specific.

13. Gary's Request does not sufficiently describe the corrections it is requesting to enable us to grant its request even if we found it appropriate to do so. Even if Gary had specified the exact corrections it was seeking, however, the request for corrections would be denied. SLD follows a general practice, which the Common Carrier Bureau has upheld, that it will not accept new information on appeal to correct alleged data entry errors unless the error is shown to be the fault of SLD.³⁰ Thus, Gary is not now entitled to submit new information to correct the data entry errors in its FCC Form 471.

14. In certain cases, SLD will grant an appeal that asserts that an applicant made a data entry error in its FCC Form 471 if there was other information contained in the application or provided during the Program Integrity Assurance (PIA) review process that presented the correct information.³¹ The applicant must identify the mistake on appeal and demonstrate how SLD could have reasonably ascertained the true nature of the information. Here, Gary has not identified any information in the original application or provided during the PIA review process from which SLD could have reasonably ascertained the true nature of the relevant information. Indeed, the additional documentation attached to the FCC Form 471, far from supporting Gary's assertion that some of its FRNs were placed in the wrong category of service, only confirms that each of the FRNs on review was correctly characterized as internal connections.³² Further, our review of the attachments reveal nothing that indicated any error in the discount calculations of the entities listed in Block 4 or anything that would have apprised SLD that any of the FRNs were wrongly classified as shared service requests.

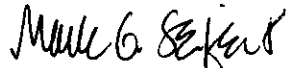
³⁰ See *Request for Review by Baltimore Junior Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195870, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 14776, paras. 7, 10 (Com. Car. Bur. 2001) (affirming denial of request to correct alleged error in discount rate resulting from applicant's erroneous reliance on participating, rather than eligible, students).

³¹ See SLD web site, <<http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>>. The PIA review process examines applicants' FCC Forms 471 and other documentation to ensure that the discounts recipients obtain are for eligible services, provided to eligible entities, for eligible uses. See SLD web site, <<http://www.sl.universalservice.org/reference/6pia.asp>>.

³² See FCC Form 471, Gary Community School Corporation, filed January 19, 2000, attachments 2-6.

15. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Gary Community School Corporation, Gary, Indiana, on May 16, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

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Wireline Competition Bureau